IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE AT NASHVILLE

JANE DOE, as parent and)
next friend of JOHN DOE, a minor)
)
Plaintiffs)
)
v.) Docket No: 3-04-0143
) JURY DEMAND
STEVEN CRAIG FULTS, individually,) JUDGE ECHOLS
and in his capacity as an employee of) JUDGE BROWN
Rutherford County School System, JUDY)
GOODWIN in her capacity as an)
employee of Rutherford County)
Board of Education, RUTHERFORD)
COUNTY BOARD OF EDUCATION,)
DEKALB COUNTY BOARD OF)
EDUCATION,)
)
Defendants.)

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT RUTHERFORD COUNTY BOARD OF EDUCATION AND JUDY GOODWIN'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S RESPONSE FOR MOTION FOR SUMMARY JUDGMENT

Comes now the Plaintiffs by and through counsel and would respectfully request this Honorable Court consider the following facts in its review of the testimony offered by Judy Goodwin in support of Defendant Rutherford County and Goodwin's supplemental response to Plaintiff's response to their Motion for Summary Judgment:

- 1. On October 21, 2005 Defendant RCBE and Goodwin filed its Supplemental Response to Plaintiffs' Response to Defendant's Motion for Summary Judgment.
- 2. In its supplemental response, Defendant relied upon an Affidavit supplied by Defendant Judy Goodwin, as well as testimony offered by Judy Goodwin at the criminal trial for Defendant, Steven Craig Fults.

- 3. Defendant Rutherford County and Judy Goodwin's Supplemental Response to Plaintiffs' Response in Opposition to their Motion for Summary Judgment, was the first direct introduction by RCBE and Goodwin of Judy Goodwin's sworn testimony at the criminal trial for Defendant, Steven Craig Fults.
- 4. Plaintiffs would show that the testimony of Judy Goodwin upon which Defendant's Supplemental Response is partially based on its face contradictory and should be treated with the utmost scrutiny by this Court.
- 5. When asked if she personally knew that Fults was homosexual, Goodwin responded in the affirmative. (Transcript from <u>State v. Steven C. Fults</u> no. F-54333, Circuit Court for Rutherford County at Murfreesboro, page 275.)
- 6. Subsequently, at the same hearing, Defendant Judy Goodwin was asked "In the three years that you have known Mr. Fults, had he ever revealed to you that he was homosexual?" Judy Goodwin's response was "That was never expressed to me." (*Id.* at p. 287).
- 7. In her deposition testimony taken on behalf of Plaintiffs in the instant matter, Defendant Goodwin gave an account of how she first became aware of Defendant Fults' sexual orientation. Said account is both detailed and completely inconsistent with Goodwin's testimony at the criminal trial. (Deposition of Judy Goodwin at pp. 50-52.)

Plaintiffs respectfully submit that the inconsistent and overtly contradictory testimony offered by Defendant Judy Goodwin is alone enough to create significant disputed issues of material fact thus precluding summary judgment for these Defendants.

Respectfully submitted,

BY: ___/s Jeffery B. Cox ____ EDWARD L. HOLT, JR. BPRN: 14350 JEFFERY B. COX, BPRN: 23574 Attorney for Plaintiff MITCHELL & MITCHELL 106 East College Street P.O. Box 1336 Murfreesboro, TN 37133-1336 (615) 896-4211

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing has been forwarded via United States Mail, postage prepaid to:

R. Dale Bay Charles W. Cagle Deb A. Smith SunTrust bank Building 201 Fourth Avenue North, Ste. 1500 P.O. Box 198615 Nashville, TN 37219 615-259-1366

And via Certified Mail, Return Receipt Requested to:

Steven Craig Fults Southern Tennessee State Regional Correctional Facility Route 4 Box 600 Pikeville, Tennessee 37367

On this the 31st day of October, 2005.

____/s Jeffery B. Cox _____ JEFFERY B. COX